United States Court of Appeals

for the

District of Columbia Circuit

TRANSCRIPT OF RECORD

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Court of Appeals, District of Columbia

APRIL TERM, 1901.

No. 1098.

94

No. 27, SPECIAL CALENDAR.

GEORGE R. DAVIS, APPELLANT,

vs.

THE UNITED STATES.

APPEAL FROM THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

FILED MAY 16, 1901.

COURT OF APPEALS OF THE DISTRICT OF COLUMBIA.

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INDEX.

JUDD & DETWEILER, PRINTERS, WASHINGTON, D. C., MAY 16, 1901.

In the Court of Appeals of the District of Columbia.

GEORGE R. DAVIS, Appellant,
vs.
THE UNITED STATES. } No. 1098.

a Supreme Court of the District of Columbia.

UNITED STATES
vs.
GEORGE R. DAVIS. } No. 22224. Criminal.

UNITED STATES OF AMERICA,
District of Columbia, } *ss:*

Be it remembered that in the supreme court of the District of Columbia, at the city of Washington, in said District, at the times hereinafter mentioned, the following papers were filed and proceedings had in the above-entitled cause, to wit:

1 *Indictment.*

Filed in Open Court October 1, 1900. J. R. Young, Clerk.

In the Supreme Court of the District of Columbia, Holding a Criminal Term, April Term, A. D. 1900.

DISTRICT OF COLUMBIA, *ss:*

The grand jurors of the United States of America in and for the District of Columbia aforesaid upon their oath do present:

That one George R. Davis, late of the District aforesaid, on the fifth day of July, in the year of our Lord one thousand eight hundred and ninety-nine, with force and arms, at the District aforesaid, certain securities and obligations of the said United States, current as money and being in the national currency and money of the said United States, of the value in the aggregate of one thousand dollars, the respective kinds, descriptions, denominations, and values whereof the grand jurors aforesaid have no means of ascertaining, and therefore cannot give, of the goods, chattels, and moneys of the Southern Express Company, a body corporate, then and there being and in its possession found, feloniously did steal, take, and carry away, against the form of the statute in such case made and provided and against the peace and Government of the said United States.

Second Count.

And the grand jurors aforesaid, upon their oath aforesaid, do further present that the said George R. Davis, on the fifth day of July,
in the year of our Lord one thousand eight hundred and
2 ninety-nine, and at the District aforesaid, was an employee of—
that is to say, a messenger in the service of—the Southern Express Company, a body corporate, and that the said George R. Davis did then and there and while he was such employee embezzle and wrongfully convert to his own use and fraudulently take, make away with, and secrete, with intent to embezzle and fraudulently convert to his own use, and did knowingly and wilfully and wrongfully dispose of certain securities and obligations of the said United States, current as money and being in the national currency and money of the said United States, of the value in the aggregate of one thousand dollars, the respective kinds, descriptions, denominations, and values whereof the grand jurors aforesaid have no means of ascertaining, and therefore cannot give, belonging to the said body corporate, which said securities and obligations had then and there come into the possession and under the care of him, the said George R. Davis, by virtue of the employment aforesaid of him, the said George R. Davis, and while he, the said George R. Davis, was so employed as such messenger, as aforesaid, against the form of the statute in such case made and provided and against the peace and Government of the said United States.

THOMAS H. ANDERSON,
Attorney for the United States in and for the District of Columbia.

3 Endorsed: No. 22224. United States *vs.* George E. Davis. Larceny and embezzlement. Witnesses: John B. Hockaday, James E. Dowe, James O'Brien, John C. Ellis, Earnest Farrell, Charles B. Vroom, R. C. Boarman, Arthur Baumgarten. A true bill. W. H. H. Cissel, foreman.

4 *Motion to Quash Indictment.*

Filed in Open Court April 10, 1901. J. R. Young, Clerk.

Supreme Court of the District of Columbia, Holding a Criminal Term.

UNITED STATES
vs.
GEORGE R. DAVIS. } No. 22224.

Comes now the defendant, George R. Davis, in his own proper person and by his counsel, and, having heard the indictment in the above-entitled cause read, says that the same is wholly insufficient in law to require him to plead thereto, and he now moves the court

to quash said indictment and each and both counts therein for the following reasons, namely:

1. The two counts in said indictment—the first charging grand larceny and the second charging embezzlement against the defendant—are inconsistent, and there is a misjoinder of counts in said indictment, one of said counts charging a felony and the other a misdemeanor.

2. The first count does not sufficiently specify, describe, or identify the goods, chattels, and monies alleged to have been stolen by the defendant.

3. The statements and allegations in the said first count are inconsistent wherein it charges that the defendant stole certain securities and obligations of the United States, current as money and being in the national currency and money of the United States. Said attempted description of the property alleged to have been stolen describes no property known to the laws of the United States.

5 4. The second count in said indictment is insufficient, in that it does not sufficiently specify, describe, or identify the property and money alleged to have been embezzled by the defendant.

5. The said second count in the indictment does not state sufficient facts to show that that relation existed between the defendant and the Southern Express Company by which he could be guilty of embezzlement.

6. Each and both of said counts in said indictment is and are vague, indefinite, uncertain, and wholly insufficient in law to require the defendant to plead to the same.

7. There is no sufficient record in said supreme court of the District of Columbia showing that the same, holding a criminal court for the April term, 1900, was ever organized as required by law.

8. There is nothing in the record of the supreme court of the District of Columbia for the April term, 1900, which shows that the said court was held at the place fixed and designated by law for the holding of said court, nor does the record show where said court was held.

9. The record does not show that there was at the April term, 1900, of the supreme court of the District of Columbia a grand jury duly and legally organized, with authority to discharge the duties incumbent upon the grand jury in and for said District of Columbia, for the April term, 1900, of said court.

10. The record does not show that the said indictment was found and returned into court by a legally constituted grand

6 jury.

11. There is no record in said court showing that the grand jury ever found and returned into court any valid indictment against the said defendant.

12. There is not made nor stated in said indictment, as by law is required to be, the estate or degree or mystery of said defendant, nor of the town, nor hamlet, nor place, nor county of which he was and in which he was conversant at the time of the alleged commission

of the offences charged in said indictment, nor at the time said bill of indictment was found.

13. It is not stated or averred in said indictment that the said George R. Davis was of or conversant or residing in the county of Washington, District of Columbia, either at the time of the said alleged commission of said offences or at the time said indictment was found.

14. It does not appear from the record of this court that the court has jurisdiction of the defendant.

15. Said indictment is insufficient in law, in this, among other things, that it does not state the particular town, village, hamlet, or place where the alleged crime was committed.

16. This court has no jurisdiction of the defendant or the matters charged in said indictment.

Wherefore, for the defects in said indictment and for the want of jurisdiction in this court, the said defendant prays judgment of said indictment, and that the same be quashed.

GEORGE R. DAVIS.

FRED BEALL,
Attorney for Def't.

7 *Motion to Quash Indictment Overruled.*

Supreme Court of the District of Columbia.

THURSDAY, *April* 11, 1901.

The court resumes its session pursuant to adjournment, Mr. Justice Barnard presiding.

* * * * * * *

UNITED STATES
vs.
GEORGE R. DAVIS. } No. 22224. Indictment for Larceny and Embezzlement.

Come as well the attorney of the United States as the defendant in proper person, according to his recognizance, and by his attorney, Fred Beall, Esq.; whereupon, the defendant's motion to quash the indictment coming on to be heard, after argument, it is considered by the court that said motion be, and it is hereby, overruled; and thereupon, the defendant being arraigned upon the indictment, he pleads thereto not guilty, and for trial puts himself upon the country, and the attorney of the United States doth the like.

8 *Arraignment.*

Supreme Court of the District of Columbia.

THURSDAY, *April* 11, 1901.

The court resumes its session pursuant to adjournment, Mr. Justice Barnard presiding.

* * * * * * *

UNITED STATES
vs.
GEORGE R. DAVIS. } No. 22224. Indicted for Larceny and Embezzlement.

Come as well the attorney of the United States as the defendant in proper person, according to his recognizance, and by his attorney, Fred Beall, Esq.; whereupon, the defendant's motion to quash the indictment coming on to be heard, after argument, it is considered by the court that said motion be, and it is hereby, overruled; and thereupon, the defendant being arraigned upon the indictment, he pleads thereto not guilty, and for trial puts himself upon the country, and the attorney of the United States doth the like.

9 *Memorandum.*

1901, April 15.—Jury sworn and respited from day to day until—
" April 20.—Verdict: Guilty on the 1st count of the indictment, but not guilty on the 2nd count thereof.

Motion in Arrest of Judgment.

Filed April 24, 1901.

In the Supreme Court of the District of Columbia, Holding a Criminal Term.

UNITED STATES
vs.
GEORGE R. DAVIS. } No. 22224.

And now, after verdict and before sentence, comes the said George R. Davis and prays that judgment may be arrested, and for causes says:

1. It does not appear from the record in said cause that the said court had jurisdiction of the defendant, and all necessary jurisdictional facts do not appear upon the face of the record. The record does not show that the said court, at the term thereof at which the indictment in this case is alleged to have been filed in court, was held at the place designated by law for the holding of said
10 court, nor does the record show where the said court was held for the April term, 1900.

2. The record does not state where the said court for the April term, 1900, was held; nor does it show that a grand jury of good and lawful men was empaneled as required by law.

3. Said indictment upon which the defendant was tried is insufficient in law, in this, among other things, that it does not state the particular town, village, hamlet, or place where the alleged crime was committed.

4. Said indictment does not show the place of residence of defendant nor his addition of degree of mystery, as by law in this District in force is required to be shown upon every indictment.

5. There is a misjoinder in said indictment, wherein embezzlement, which is a misdemeanor, is joined in a count with grand larceny, which is a felony.

6. Neither count in said indictment sufficiently specified, described, or identified the property and money alleged to have been taken by the defendant.

7. The said indictment did not inform the defendant of the nature and cause of the accusation charged against him in either of said counts.

8. There was no proof introduced before the jury which showed or tended to show that the defendant ever committed any crime within the District of Columbia, or that he was guilty of either crime charged in said indictment within the District of Columbia.

9. There was no proof introduced on the trial of said cause which showed or tended to show that the defendant had either stolen or embezzled any securities and obligations of the United States, current as money and being in the national currency and money of the said United States. The court should have instructed the jury, upon the motion of the defendant, to return a verdict of not guilty as against him when the proof developed the fact that whatever offenses, if any, the defendant had committed *was* committed outside of the District of Columbia, there being no proof whatever that the defendant had committed any crime within the District of Columbia.

10. The court should have instructed the jury, when by the defendant so requested, to return a verdict of not guilty against the defendant when, after all the testimony of the Government had been introduced, there was no testimony whatever which proved or tended to prove that he had taken any legal-tender money of the United States, or that the alleged lost package contained any legal-tender money whatever of the United States.

11. The proof introduced before the jury clearly developed the fact that the court had no jurisdiction of the crime alleged to have been committed, nor of the defendant.

Wherefore, for the causes herein assigned and for the causes assigned in the motion to quash said indictment, and for other manifest defects in the record aforesaid, the said George R. Davis prays that judgment herein may be arrested.

GEORGE R. DAVIS.

FRED BEALL,
Attorney for Defendant.

12 *Memorandum.*

1901, April 25.—Motion for a new trial filed.

Sentence.

Supreme Court of the District of Columbia.

MONDAY, *May* 6, 1901.

The court resumes its session pursuant to adjournment, Mr. Justice Barnard presiding.

* * * * * * *

UNITED STATES
vs.
GEORGE R. DAVIS. } No. 22224. Convicted of Larceny.

Come as well the attorney of the United States as the defendant in proper person, in custody of the warden of the jail of the District of Columbia and by his attorney Fred Beall, Esq.; whereupon the defendant's motions in arrest of judgment and for a new trial coming on to be heard, after argument, it is considered by the court that said motions be, and they are hereby, overruled, and thereupon it is demanded of the defendant what further he has to say why the sentence of the law should not be pronounced against him, and he says nothing except as he has already said; whereupon it is considered by the court that for his said offense the defendant be taken by the warden aforesaid to the common jail from whence he came,
13 thence to the West Virginia penitentiary at Moundsville, W. Va., there to be imprisoned and kept at labor for the period of three (3) years, to take effect from the date of arrival at said penitentiary; and thereupon the defendant, by his attorney, prays an appeal to the Court of Appeals of the District of Columbia from the judgment of the court in this case, which is granted, and the U. S. attorney in open court waives the issue of a citation; whereupon the defendant, by his attorney, moves the court to fix the amount of the bond in this case on appeal to the Court of Appeals; which motion is granted, and said bond is fixed in the sum of one hundred dollars ($100).

Memorandum.

1901, May 6.—Bond for costs on appeal filed.

Bill of Exceptions Approved.

Supreme Court of the District of Columbia.

TUESDAY, *May* 14, 1901.

The court resumes its session pursuant to adjournment, Mr. Justice Barnard presiding.

* * * * * * *

UNITED STATES
vs.
GEORGE R. DAVIS. } No. 22224. Convicted of Larceny.

Now comes here the defendant, by his attorney, Fred Beall, Esq., and presents to the court his bill of exceptions to the rulings of the court taken at the trial of this cause, and prays that the same
14 may be sealed, signed, and made a part of the record, which is done accordingly, *nunc pro tunc.*

15 *Bill of Exceptions.*

Filed in Open Court May 14, 1901. J. R. Young, Clerk.

In the Supreme Court of the District of Columbia, Holding a Criminal Term.

UNITED STATES
vs.
GEORGE R. DAVIS. } No. 22224.

Comes now the defendant George R. Davis and tenders to the court here his bill of exceptions taken during the trial of the said cause, and prays that the same may be duly signed, sealed, and made a part of the record, now for then, which is done accordingly.

In the Supreme Court of the District of Columbia, Holding a Criminal Term.

UNITED STATES
vs.
GEORGE R. DAVIS. } No. 22224.

Be it remembered that this cause came on for trial before Mr. Justice Barnard, an associate justice of the supreme court of the District of Columbia, on the 15th day of April, 1901, and thereupon came the defendant, in his own proper person and by his attorney, and filed and submitted the following motion to quash the indictment herein:

"Supreme Court of the District of Columbia, Holding a Criminal Term.

UNITED STATES
vs.
GEORGE R. DAVIS. } No. 22224.

16 Comes now the defendant, George R. Davis, in his own proper person and by his counsel, and, having heard the indictment in the above-entitled cause read, says that the same is wholly insufficient in law to require him to plead thereto, and he now moves the court to quash said indictment and each and both counts therein for the following reasons, namely:

1. The two counts in said indictment, the first charging grand larceny and the second charging embezzlement against the defendant, are inconsistent, and there is a misjoinder of counts in said indictment, one of said counts charging a felony and the other a misdemeanor.

2. The first count does not sufficiently specify, describe, or identify the goods, chattels, and monies alleged to have been stolen by the defendant.

3. The statements and allegations in the said first count are inconsistent wherein it charges that the defendant stole certain securities and obligations of the United States current as money and being in the national currency and money of the United States. Said attempted description of the property alleged to have been stolen describes no property known to the laws of the United States.

4. The second count in said indictment is insufficient in that it does not sufficiently specify, describe, or identify the property alleged to have been embezzled by the defendant.

5. The said second count in the indictment does not state sufficient facts to show that that relation existed between the defendant and the Southern Express Company by which he could be guilty of embezzlement.

17 6. Each and both of said counts in said indictment is and are vague, indefinite, uncertain, and wholly insufficient in law to require the defendant to plead to the same.

7. There is no sufficient record in said supreme court of the District of Columbia showing that the same, holding a criminal court for the April term, 1900, was ever organized as required by law.

8. There is nothing in the record of the supreme court of the District of Columbia for the April term, 1900, which shows that the said court was held at the place fixed and designated by law for the holding of said court, nor does the record show where said court was held.

9. The record does not show that there was, at the April term, 1900, of the supreme court of the District of Columbia, a grand jury, duly and legally organized, with authority to discharge the duties incumbent upon the grand jury in and for said District of Columbia for the April term, 1900, of said court.

10. The record does not show that the said indictment was found and returned into court by a legally constituted grand jury.

11. There is no record in said court showing that the grand jury ever found and returned into court any valid indictment against the said defendant.

12. There is not made nor stated in said indictment, as by law is required to be, the estate or degree or mystery of said defendant, nor of the town nor hamlet nor place nor county of which he was and in which he was conversant at the time of the alleged commission of the offences charged in said indictment, nor at the time said bill of indictment was found.

18 13. It is not stated or averred in said indictment that the said George R. Davis was of or conversant or residing in the

county of Washington, District of Columbia, either at the time of the said alleged commission of said offences or at the time said indictment was found.

14. It does not appear from the record of this court that the court has jurisdiction of the defendant.

15. Said indictment is insufficient in law in this, among other things, that it does not state the particular town, village, hamlet, or place where the alleged crime was committed.

16. This court has no jurisdiction of the defendant or the matters charged in said indictment.

Wherefore, for the defects in said indictment and for the want of jurisdiction in this court, the said defendant prays judgment of said indictment, and that the same be quashed.

(Signed) GEORGE R. DAVIS.

FRED BEALL,
Attorney for Def't."

The above motion was by the court, after argument, overruled; to which action of the court in overruling said motion said defendant then and there, in open court, excepted, and asked that his exception be noted, which was accordingly done.

Thereupon the defendant, being arraigned upon said indictment, plead not guiltys; aid cause coming on for trial, a jury was empaneled, and the Government, to maintain the issue on its part joined, introduced the following testimony:

19 JAMES E. DOWE, being sworn, testified that he was secretary of the Eufaula Grocery Company, residing at Eufaula, Alabama, July 3, 1899, and that on that day he put up two or three packages of currency, amounting to one thousand dollars, and caused it to be delivered to the agent of the Southern Express Company at Eufaula, to be forwarded by said company to the Fourth National Bank of New York City. He knew some of the bills were fifty-dollar bills, but did not know and could not state in what the funds consisted, whether national bank notes, silver certificates, gold certificates, or United States Treasury notes, but he knew it was such currency of the United States as the Eufaula Grocery Company took in over its counter in the transaction of its ordinary business. He knew there was no gold or silver in the package, and could not state whether or not there was any legal-tender currency in the package. He held the receipt of the Southern Express Company for the package.

JAMES O'BRIEN, being duly sworn, testified that on July 3, 1899, he was the agent at Eufaula, Alabama, for the Southern Express Company, and as such, on that day, received from the Eufaula Grocery Company one thousand dollars to be shipped by the Southern Express Company to the Fourth National Bank of New York; that he placed the thousand dollars in a regular money envelope,

sealed it up in the usual way, and directed it to the Fourth National Bank of New York, and on that day shipped it out by the Southern Express Company via Montgomery, Alabama, to New York. Witness counted the money, but could not state what it was; could not say it contained any United States Treasury notes or other legal-tender money.

Proof was then introduced upon the part of the Government which tended to show that said express package was by the South-
20 ern Express Company delivered to the money clerk of said Southern Express Company at Montgomery about 8 p. m. July 3, 1899, and was by said money clerk, John C. Ellis, retained in the office of the Southern Express Company at Montgomery and by the said Ellis placed in an iron safe; that about 5.30 a. m. July 4, 1899, Mr. Ellis, the money clerk, in the presence of Ernest Farrell, a messenger of the Southern Express Company, tied up said envelope containing a thousand dollars in a bundle containing six or seven other packages of money, and after having waybilled the same and copied the recapitulation or manifest thereof placed the bundle so tied up and containing said thousand-dollar package into a cloth bag or pouch and sealed the same by running a small wire through eyelet holes at the top of the pouch and, bringing the ends of the wire together, sealed them with a lead seal by the use of what is known as a sealing iron; that the said Farrell, the messenger, having receipted — the money clerk for said pouch, carried it to the Southern Express car and placed the pouch in an iron safe, and then, in the regular discharge of his duties as such messenger, said pouch, together with other valuables, was transported to Atlanta, Georgia, and there the said pouch, then being in good order, with the seals unbroken and not being in any way tampered with, was delivered to the defendant, George R. Davis, as a messenger of the Southern Express Company, on the car of that company, at the city of Atlanta, a short time before 12 o'clock noon July 4, 1899; that the said defendant receipted — Messenger Farrell when it was delivered to him.

The proof further tended to show that one Spears, an agent
21 for the Southern Express Company at Atlanta, about 10 o'clock on the morning of the 4th of July, went aboard the Southern Express car which runs from Atlanta to Washington, and opened what is known as the large stationary combination safe, a safe that is used by the Southern Express Company for the transportation of money and other valuable packages. The proof tended to show that the said stationary safe had two locks on it, one a combination lock and the other a key lock; that the messenger carried the key, but that he was not permitted to know the combination, and was never allowed to either throw the combination off, and thus unlock the combination, or to turn the combination on. There is also a small safe in said express car known as the messenger's portable safe, to which the messenger also has a key, and in which he places packages that are received or destined for stations at which the combination safe is not unlocked. No witness testified that he saw defend-

ant place the bag containing the $1,000 package in the combination safe at Atlanta. At Atlanta it was the duty of the witness Spears to turn the combination off, and after the messenger had placed whatever valuables he had to place in the combination safe to turn the combination on. The proof tended further to show that the train from Montgomery, upon which said package was brought to Atlanta, arrived at Atlanta, Georgia, a few minutes before 12 o'clock, and that there was another train which connected with the train on the Southern road from Atlanta to Washington, which was due to arrive from Birmingham, Alabama, a few minutes before 12 o'clock, but that it did not arrive until just as the Southern was pulling out at Atlanta for Washington, upon which said package was to be transferred, and that the express which came in on the train from Birmingham was delivered to the defendant Davis after the said combination safe had been closed by the transfer clerk Spears, but that when the incoming messenger of the Birminghan train delivered the monies which he had for the Atlanta and Washington train he did not have time to deliver to the de-

fendant Davis the waybills. The defendant received the
22 money that was brought to him by the messenger from the Birmingham train, including some sixteen separate packages; he placed those in a small safe, known as the messenger's or portable safe. It is admitted by the defendant that he received the pouch at Atlanta containing said lost package, and that as far as he discovered it was then in good order. The proof tended to show that when the defendant reached Washington Wilse Eppley, a transfer clerk for the Southern Express Company, boarded the express car, threw the combination off the safe; that the defendant emptied the contents of that safe into his portable safe in the car, and the portable safe was then locked, placed upon a truck, and carried to the street and placed upon a wagon, and that the safe, accompanied by Davis and the driver of the wagon, was carried to the office of the express company, 921 Pennsylvania avenue, and delivered to R. H. Yates, the money clerk of the Southern Express Company. R. H. YATES, a witness for the Government, testified that he received the safe about 7 a. m., July 5, 1899, and that he examined the pouch and the seal of the same, and that he discovered nothing wrong about it. He testified that he had the safe with its contents, the safe being open, in his room for twenty or thirty minutes, and that there was no one in the room with him during that time. The testimony then tended to prove that Yates put everything that was intended for New York in a safe, locked it up, and sealed it, and put the key in a separate envelope and sealed that as money packages are usually sealed, and it was then delivered to the express car, at Washington, and sent to New York, where it ar-

rived somewhere about 4 o'clock in the afternoon and was
23 carried to the express office; that when it reached New York the envelope containing the key was intact, seals unbroken, and key inside of that envelope, the safe locked and sealed, and that the agent at New York with the key which was sent along

with the safe unlocked the safe, breaking the seals, took out this particular pouch and emptied the contents upon a shelf, and upon examination of the contents everything was all right except that this particular package was not there, and a package containing twenty-five thousand dollars was opened at both ends, but no part of the twenty-five-thousand-dollar package was taken out; the money in that package was all there. The pouch was opened in the presence of the chief clerk of the Southern Express Co., and there were two other employés of the company in the room when it was opened. Upon examination of the seal after it was discovered that the $1,000 package was missing it was found that the seal was not the genuine seal of the Southern Express Co. used at Montgomery, Ala., but was an imitation thereof. Mr. VROOM, the money clerk of the company at New York, who opened the pouch, testified that money packages had been lost in the New York office.

ARTHUR BAUMGARTEN, a witness for the Government, testified that he was a maker of seals at 1005 E street N. W., Washington, in June, 1899, and that the defendant came to his place of business on Saturday, June 17, 1899, and ordered a sealing iron made with a die which should have on it "Sou. Ex. Co., Montgomery;" that he gave his name as H. B. Smith; that witness agreed to make the sealing iron as ordered; that the defendant paid for the same when he left his order, and that the defendant gave him a card upon which was written H. B. Smith and "Sou. Ex. Co., Montgomery;" that he made the sealing iron as ordered by the defendant, and delivered it to him at his place of business on Tuesday, June 20, 1899; that the sealing iron was such an one as could make the impression found upon the lead seal which bound the wire fastenings of said pouch when it was opened in New York, and witness identified the lead seal on the pouch as one which was made by the sealing iron made by him for the defendant. Witness further testified that some time in August 1899, Mr. Leith, a Pink-
24 erton detective, came to his place of business and inquired of him if he had made a sealing iron for any one, and that he then informed Leith what he had done, and showed him the card which the defendant had left with him; that soon after Mr. Leith returned to witness' place of business with J. B. Hockaday, the assistant superintendent of the Southern Express Company, when witness again explained to them all that had occurred as to the making of the sealing iron, and gave to them the card left by the defendant; that on August 16, 1899, witness was requested to go to the Southern Express office in this city for the purpose of identifying the man for whom he had made the sealing iron; that he met at the office Messrs. Hockaday and Leith, and that while there the defendant came into the office and took his seat at a table; that witness then recognized the defendant as the man who had ordered the sealing iron made and to whom he had delivered it; this was about 10 a. m., August 16, 1899; that after he had informed Hockaday and Leith that he recognized defendant as the man for whom he had made the sealing iron, Hockaday, Leith, and

witness went into a small hall-room adjoining the main office of the assistant superintendent, and then Mr. Hockaday called defendant in, closed the hall-room door; Mr. Leith then asked witness, "Is this the man for whom you made the seal?" Witness replied, "Yes;" and immediately the defendant drew a revolver and began to shoot at witness.

On cross-examination witness testified that he did not know how the defendant was dressed on the occasion of either of his visits to his place of business; could not tell what kind of a hat or
25 coat or any other article of clothing he wore; could not tell whether his hair was long or short, but testified that he identified him mainly by the peculiarity of his voice, but could not describe what that peculiarity was. He further testified that when the defendant ordered the sealing iron that he told him that he wanted it to use in the business of a private express company, and when asked by counsel for the defendant if he did not testify on a former trial that the defendant told him that he wanted the sealing iron to seal trunks and baggage he admitted that he probably did, but could not now say, but that if he did he had at former trial not stated all that the defendant said to him as to the use for which he wanted the sealing iron.

Witness testified that the office of the Southern Express Co. was in two blocks of his place of business, and that he was well acquainted with the location of the office when the defendant ordered the sealing iron with a die to imprint "Sou. Ex. Co.," and the statement by the defendant that he wished it to use in a private express company did not excite or cause any suspicion on his part that the sealing iron was to be used for any improper purpose.

MORRIS KAUFMANN, a witness for the Government, testified that he was a seal-maker, doing business on 7th street, in this city, in June, 1899, and that the defendant came to his place of business and asked him to make a die for a sealing iron, but he did not remember what was to be on the die. This witness identified the defendant as being the man who came to his office in June, 1899, to have the die made, but could not state how he was dressed nor he could not tell
26 whether he wore his hair long or short, but stated that he had a short, stubby mustache. He could not remember the particular time that the defendant came to his place of business.

HENRY J. REYNOLDS, a witness for the Government, testified that he was a baggagemaster running on the Southern road in June, 1899, and that on one occasion between Charlotte, N. C., and Atlanta, Ga., he saw a sealing iron lying upon the stationary safe in the express car; that the defendant was the express messenger on that car, and that while the train was running he asked the defendant whose sealing iron it was, but that the defendant made no reply, and he did not know whether he heard him or not, as the car was running and making a great deal of noise. He testified further that such sealing irons as he saw were carried by the baggagemaster

in being transported from one part of the road to another, and that they sometimes went by express; that the one he saw on the safe was not his.

GEORGE E. LEITH, a witness for the Government, testified that in July and August, 1899, he was living in the city of New York, in the employ of the Pinkerton Detective Association; that he was directed by the superintendent of that association to come to Washington to investigate the loss of a thousand-dollar package which he understood had been shipped from Eufaula, Alabama, to the Fourth national bank in New York; that he came to the city of Washington and conferred with the officials of said express company, and from there he went to Eufaula and Montgomery, Ala., and Atlanta, Ga., and other places along the line over which the said package of money should have come; that in the course of his investigation he saw the defendant in Atlanta, Ga., and had a private
27 conversation with him in a room and discussed with him the loss of the package, in which conversation the defendant told him he knew nothing about its loss. Continuing his investigation, he returned to the city of Washington and went to the place of business of Arthur Baumgarten, who informed him that he had made a sealing iron for some one to imprint "Sou. Ex. Co., Montgomery;" that he obtained from Mr. Baumgarten what information he could, and got from him a card upon which was written H. B. Smith, and he carried that card to Mr. Hockaday, and Mr. Hockaday, from the writing on the card, suspected the defendant; that after defendant's arrest a memorandum book was found in his room in which was written the name "H. B. Smith," in the handwriting of the defendant; that after further investigation and conference with the express company officials, on August 16, 1899, by previous arrangement, the witness, Baumgarten, and Hockaday met in the office of the latter, which is on the third floor of 921 Penn. Ave. northwest, Washington. Mr. Baumgarten, having observed the defendant when he came into the assist. superintendent's office, indicated to witness and Mr. Hockaday that he recognized the defendant as the man who had ordered the sealing iron; that after some consultation between Hockaday, witness, and Baumgarten they went into a small hall room adjoining the office of the superintendent, and Mr. Hockaday called the defendant in there; when he said to him, "Mr. Baumgarten says that you ordered him to make a seal," and asked Mr. Baumgarten if the defendant was the man, Baumgarten said that he was, and thereupon the defendant drew his pistol and began to shoot at Baumgarten. The defendant was arrested and carried to the police station.

JOHN B. HOCKADAY, a witness for the Government, testified that in June, July, and August, 1899, he was assist. superintend-
28 ent of the Southern Express Company, stationed at Washington, D. C.; that during that period the defendant was a messenger in the employ of the Southern Express Company, running

between Atlanta, Ga., and this city; that when he was notified of the loss of a thousand-dollar package he began an investigation; caused a detective to be employed to work the case up. Mr. Leith, the detective employed, after investigating the matter for some time reported to him that he had discovered that some one had had a sealing iron made by Arthur Baumgarten, at 1005 E St. N. W., Washington, and exhibited to him a card upon which was written "H. B. Smith," which Leith stated he received from Mr. Baumgarten; that he, on account of the resemblance of the writing on the card to that of the defendant, determined to have the matter further investigated, and arranged to have the defendant come to his office on the morning of August 16, in order that Baumgarten and Leith might see him and to determine whether or not Baumgarten would identify him as the man who had had the sealing iron made. Davis reported at the express office about 10 o'clock on the morning of August 16, and, under the direction of the witness, seated himself at a table in the middle of the office, while Mr. Baumgarten was at the south end. Witness had Davis to do some writing, and had him to change his position once. Mr. Baumgarten and Mr. Leith then went out of the office, and were gone for a few minutes and then returned, when they and witness went into a little hall room adjoining the main office. Baumgarten stated that he identified the defendant as the man for whom he had made the sealing iron, and thereupon the defendant was called into the hall room by the witness, and when he was told that Mr. Baumgarten said that he had made a sealing iron for him, and Baumgarten, being asked
if Davis was the man, stated that he was, Davis drew his
29 pistol and began to shoot; whereupon the defendant was arrested and carried to police station No. 1. Witness further testified that at the request of the defendant he went to the station-house about 6 o'clock that afternoon to see him, and that he had a conversation with him.

Here the jury was directed to retire, and the witness was examined, in the presence of the court, touching what occurred between him and the defendant on the occasion of his visit to him at the cell. The witness testified that he gave the defendant to understand that he believed he was guilty of taking the money, and when he asked him where the money was that he told him he had only $700 of it left. The witness was asked if he did not testify before the police court in reference to this matter, and he stated that he did. He was asked if he did not testify that "he (meaning the defendant) sent for me, requested me to call upon him, which I did. In the course of the conversation I took occasion to let him understand that I believed he was guilty and the proper course for him to pursue was to make a confession, and said to him, "Davis, what did you do with the money?" He replied, "I have only $700 of it left." The witness denied that he said to the defendant on that occasion that "the proper course for him to pursue was to make a confession." The witness was also asked how many times he visited the defendant upon the night of the shooting and how late he was there the last

time. He testified that he was there twice, and that he was not there later than 9 o'clock. He was then asked if he did not testify before the police court that he visited the defendant three times that day, and that the last time he was there was about 11 o'clock at night. He testified that he did not give such testimony.

30 The jury having been brought into court, and the further examination of this witness being taken up, the defendant objected to the introduction of any testimony by this witness as to any confessions or admissions made to him by the defendant on the 16th of August, 1899, for the reason, first, that the defendant was the assistant superintendent of the Southern Express Company and the superior officer of the defendant; that he had caused him to report to him at his office on that day, and then had carried him into a small room, confronted him with himself and two other large men and in effect charged him with the crime, and that then he had visited him three times that afternoon and night at the police station, and, after having made him to understand that he believed he was guilty, had advised him to confess the crime. The objection of the defendant to the introduction of that testimony was overruled; to which action of the court the defendant then and there in open court excepted, and asked to have his exception noted, which was accordingly done. Thereupon the witness proceeded to testify that he visited the defendant twice in the afternoon and evening of August 16, the day that the shooting had occurred; that he gave the defendant to understand that he believed he was guilty of taking the money, and asked him where the money was, and he told him that he had only $700 of it left, but did not tell him where the money was; that he could not find out that. The witness was then asked if he did not state to the defendant that he was his friend, and that he visited him as his friend, all of which he denied. He testified that the defendant's reputation for honesty and integrity was good up to the time of the loss of the $1,000.00.

31 R. H. YATES, a witness introduced upon the part of the Government, testified that he was money clerk at the city of Washington for the Southern Express Company on the 5th day of July, 1899, and that in the discharge of his duties on the morning of that date he received from the defendant his portable iron safe, in which, after being opened, he found the money pouch exhibited in court, and that he examined the same in order to determine its condition and the condition of the seal, as was his duty, and that he found nothing wrong in any way about the seal of the pouch, and accordingly receipted — Davis for the contents of the safe; that he had the safe in his room for 20 to 30 minutes when there was no one present but himself, his room being cut off by partition from the other offices in the building of the express company. He testified that it was the duty of an agent of the express company, when they received from any other agent or messenger any express matter, to examine and see that it was in good order, and, if there was anything found wrong, to refuse to receipt for it as in good order, and

to report the same to the company, and that whenever a receipt was given from one agent or employee of the express company to another that the meaning of that receipt was that that for which he receipted was in good order. This witness testified that he was discharged by the express company a few days after the 5th of July, 1899, and had not been in the employ of the company since. Counsel for the defendant asked if he was not discharged on account of the loss of money; to which question the Government, through its counsel, objected. The court sustained the objection and would not permit the witness to answer the question; to which
32 ruling of the court the defendant then and there excepted and asked that his exception be noted, which was accordingly done.

Mr. Yates was then asked if he had not testified in the police court when this matter was being investigated before that court, and he stated that he did not and that he was as positive that he had not testified before the police court in this matter as he was of anything else that he had testified to on this occasion.

33 The Government admitted that the defendant's general reputation for honesty and integrity was good up to the time of the loss of said $1,000 package. The defendant testified in his own behalf that at and prior to the time of the alleged loss of the $1,000 package he was, when in Washington, boarding and rooming at 641 S. C. Ave. S. E., Washington; that there were three other messengers of the Southern Express Company that occupied the same room with him; that he had an ordinary common trunk in his room; he testified further that the little memorandum book exhibited in evidence is his book, but he had no recollection as to where or when he had last seen it; that he wrote in that book the name of H. B. Smith—that is, the writing is his writing—and that H. B. Smith is the name of a cousin of his *of* whom he has always been much attached, and with whom he has kept up an occasional correspondence, and about whom he often spoke to his friends and room-mates, both here in Washington and in Atlanta, Ga.; that he did not visit the place of business of Arthur Baumgarten, as stated in the testimony of Baumgarten, nor did he ever give him a card with the name H. B. Smith on it.

That at the time this package was lost his duty was to make the through run from Atlanta, Ga., to Washington, D. C.

34 The testimony upon the part of the defendant tended to prove that his general reputation for honesty and integrity had always been good; that he had been in the employ of the Southern Express Company some three or four years; that a few minutes before 12 o'clock noon, July 4, as a messenger of the Southern Express Company, he received from Mr. Farrell, the express messenger who ran from Montgomery to Atlanta, the money pouch out of which it was alleged the thousand-dollar package was taken; that when it came to him it was in good order, and the seal was perfect, so far as the defendant discovered; that he placed the pouch, together with other valuables, in the combination safe

a few minutes before 12 o'clock; that about 12 o'clock the transfer agent of the company at Atlanta came in the car and locked the safe, turning the combination on; that the safe was not opened any more until the train reached Charlotte, N. C.; that it was there opened by the transfer clerk, Mr. Connelley, and in his presence the defendant took out such packages as he had for Charlotte and delivered them to the transfer clerk, who stood immediately in front of the door of the combination safe; that the defendant also at the same time and place opened his portable safe and took out some sixteen valuable packages, and in the presence of Connelley placed them in the combination safe; that Connelley was in a position and did see into the bottom of the little safe, and that there was at that time no pouch or sack in the little safe; that Connelley locked the combination safe without having left it after he came into the express car; that the combination was not turned off and the safe opened again until it reached Salisbury, N. C., and that
35 on the arrival of the train at that place the transfer clerk, Mr. Dunham, came into the express car, opened the combination safe, delivered to the defendant what money packages he had to ship out, and received from the defendant what valuable packages he had for that point; that Mr. Dunham stood by and saw everything taken out of the combination safe that was taken out, and everything put in that was put in; that the combination safe was not opened from Salisbury, N. C., until it reached Greensboro, N. C., where it was opened in the presence of the transfer clerk at that point, and closed by him in the same manner as it had been opened and closed at each of the preceding places; that the next place the combination safe was opened was Danville, Va., and the next place was Lynchburg, Va., at each of which places the same things were done by the transfer clerks and by the defendant as had been done at the preceding places; that at each of those places the transfer clerk saw everything taken out of the combination safe that was taken out, and saw everything put in that was put in, and remained in the express car and near the combination safe from the time it was opened until it was closed and locked. From Lynchburg, Va., to Washington there was no occasion to open the combination safe, and that it was not opened; that on the arrival of the train at the city of Washington Mr. Wilse Eppley boarded the express car, opened the combination safe, stood by and saw the contents of it placed in the portable safe, and that safe locked, placed upon a truck and carried to the wagon which carried it up to the express office, where it was delivered to Mr. R. H. Yates, the money clerk of the express company, at the office, as hereinbefore stated.

The proof tended to show that the combination safe
36 herein mentioned was a large, secure safe, in perfect order, and that the defendant did not have and was not permitted to have the combination, and that when it was locked it was impossible for him to have gotten into it unless he should have known the combination. The proof tended to show that the express car and baggage car were the same; that there was no partition between the

express matter and the baggage, but that the express was kept in one end, as a general rule, and the baggage in another; that the stationary safe stood up against the side of the car and between two doors and about the middle of the car; that the baggagemaster and express messenger, when not engaged in checking up their work, usually occupied the space about the middle of the car and very near together; that they usually sat together when they were making out their records; that the baggage and express car had one door in the end next to the passenger coach; that that door was never locked; that the conductor, porter, and flagman frequently came into the baggage and express car at any and all hours, day and night; that passengers frequently came in there, and that route express agents and officers of the express company were liable to come in at any place and at any time. The testimony of the baggagemaster tended to show that the defendant had no opportunity of getting into the combination safe so as to have taken out or put anything in at any time between Atlanta and Washington, except at the places where there were transfer clerks, and then the stationary safe was always opened by such transfer clerks, and so long as it remained open they were present so as to see everything that went in or was taken out.

37 The defendant, testifying in his own behalf, denied that he had ever taken the money or any part thereof, or that he had any knowledge of the loss. He denied that he ordered any sealing iron of the witness Baumgarten or any die of the witness Kaufmann, and testified that he never saw either one of them before the 16th of August, 1899. He denied that he was ever at the place of business of either Baumgarten or Kaufmann. He stated that he had no recollection of seeing the sealing iron of which Reynolds testified to having seen on his safe, but stated that it was no unusual thing for sealing irons to be in the express and baggage car, and that there might have been one on his safe, as small packages and things of that kind were very frequently laid up on the safe; that sometimes a sealing iron might be picked up and used in mailing up boxes or things of that kind that were being carried by express.

He stated that in June, 1899, he was wearing a long brown mustache, and that statement of the defendant was corroborated by a number of other witnesses. His proof further tended to show that on August 16, 1899, he received instructions from some one to report at Mr. Hockaday's office between 9 and 10 o'clock; that he went to his boarding-house in southeast Washington, got his breakfast, and reported, as directed, to Mr. Hockaday; that when he reached the office he saw a man sitting at the far end of the office that he afterwards learned was Mr. Baumgarten, but that he had never seen him before, and did not then know who he was; that he saw Mr. Leith there and Mr. Hockaday, and that after having done some writing, according to the directions of Mr. Hockaday,

38 he observed the three men go into a small hall room in the south end of the building, and soon afterwards Mr. Hockaday came to the door and called him in, and that he went in, not know-

ing what they wanted with him; that as he went in Mr. Hockaday closed the door, and that, the three men standing rather near each other and between him and the door, Mr. Leith spoke to him, saying, "You had a sealing iron made at this man's place," pointing to Baumgarten, "on the 17th of June," and asked Baumgarten if he was the man. Baumgarten nodded his head. Then Mr. Hockaday said, "Davis, you had as well own up; we have sufficient evidence to know that you are the man that got the money." Then Leith said, "I will give you five minutes to fork up the money." Witness then testified that, being accused of a crime of which he was not guilty and could not have done and did not want to do and was confronted by three men in a little room, he drew his pistol and commenced shooting; that he was immediately arrested and carried to the station; that after being carried to the station he learned that Mr. Hockaday was hurt at him for trying to kill him; that defendant understood that the charge was made that he had attempted to kill Hockaday. Witness testified that he had not attempted to kill Hockaday, and that when he learned Mr. Hockaday was hurt about the matter he sent for him to tell him that he did not intend to kill him; that Mr. Hockaday then told him that he felt a fatherly interest in him; that he was his friend, and that he was willing to do anything for him that he could, and that if witness would *get* up the money that he would see that nothing was done with him;
39 that the matter should not get into the papers, and that his mother and friends should not learn anything about it. Witness stated that he had never been in such a place before; that he was excited, and that in his excitement he remembers that he did say to Mr. Hockaday that he could not raise over $600 or $700; that he believed possibly he might raise something like that, but that he never confessed to having taken any money; that he never intended to confess to taking any money; that he had taken no money from the express company or anybody else. He says the statement made by Mr. Hockaday that he confessed that he had $700 of the money left is untrue; that he had never taken any money, and that he did not, therefore, have any money left, and that he had no money.

Witness further testified that R. H. Yates was a witness at the trial of the case before the police court in August, 1899, and that he testified at length on that occasion.

JOHN M. CONNELLEY, a witness for the defendant, testified that on the 4th of July, 1899, he was transfer clerk for the Southern Express Company, at Charlotte, N. C., and that he remembers the arrival of the train on that evening, about 8 o'clock, and that the defendant was the express messenger on the Southern road going from Atlanta to Washington; that he went aboard the express car on the arrival of the train and opened the combination safe and transferred to the defendant what express matter he had going north and received from the defendant what was for Charlotte; that he was present and saw everything that came out of the combination

safe and everything that went in the combination safe on that occasion; that he saw the defendant take out a number of packages out of his portable safe and place them in the combination safe; that from the position which he occupied he could see in the said portable safe, and that he saw the bottom of the safe and saw Davis take everything out of it, and that there was no bag or pouch in that safe, and that while the portable safe remained open witness closed the door of the combination safe and turned the combination on, thereby locking the safe. Further testimony of the witness tended to establish that the reputation of the defendant for honesty and integrity was good.

The defendant introduced in his behalf all the transfer clerks and baggagemasters who were on the train on which the alleged lost package was brought from Atlanta to Washington, and the testimony of each and every one tended to show that the combination safe on said express car at that time was in good condition, and that the defendant had no opportunities of getting into that safe from the time he left Atlanta, Ga., until after he had reached Washington, except as it would be opened at each transfer station by the transfer clerks.

T. Reed Clift, a witness for the defendant, testified that he was a stenographer and typewriter; that he took the testimony of the witnesses who were introduced on the trial of the defendant in the police court when this matter was being investigated before that court in August, 1899; that he recognized the paper shown him as a typewritten copy of the testimony which he had taken down at that trial; that the same was correct.

He testified that R. H. Yates was introduced as a witness on behalf of the Government at that trial, and exhibited his testi-
41 mony given in on that occasion. He further testified that John B. Hockaday testified on that occasion, and that he took his testimony down, and that he testified on that occasion as follows:

"Q. Did he make a confession? A. Not until after he had done the shooting and when I visited him in the jail.

Q. You visited him? A. He sent for me; requested me to call upon him, which I did. In the course of the conversation I took occasion to let him understand that I believed he was guilty, and the proper course for him to pursue was to make a confession. I said to him, 'Davis, what did you do with the money?' He replied, 'I have only $700 of it left.'

Q. Did you go twice? A. Yes; I visited him three times on that day. Twice after Mr. Beall was there.

Q. How late was the last time you were there? A. About 11 o'clock; no one with me."

42 The above is all the testimony that was introduced on the trial of said cause, and upon the conclusion of the testimony the court requested counsel on each side to submit prayers to the court for his consideration, which was accordingly done, when the

defendant, through his counsel, submitted 20 prayers for instructions, numbered respectively from 1 to 20, inclusive, and one other prayer, marked A. Counsel for the Government only submitted one prayer. The court, after having considered the prayers submitted on behalf of both sides, instructed the jury as follows:

GENTLEMEN OF THE JURY: This crime that is charged in the indictment is one laid down in our statutes by Congress in the following words:

Every person convicted of feloniously stealing, taking, and carrying away any goods or chattels, or other personal property, of the value of $35 or upwards, or any bank note, promissory note, or any other instrument of writing for the payment or delivery of money or other valuable thing, to the amount of $35 or upward, shall be sentenced, &c.

The crime charged in the indictment is that of grand larceny, and larceny has been defined by the books to be "the felonious or fraudulent taking and carrying away by any person of the personal property of another without claim or right with the intention of converting it permanently to the use of the taker or to some use other than that of the owner without his consent." The indictment charges:

That the defendant, George R. Davis, did, on the 5th day of July, 1899, at the District aforesaid, * * * certain securities and obligations of the United States, current as money and being in
43 the national currency and money of the said United States, of the value in the aggregate of $1,000.00, the respective kinds, descriptions, and denominations and value whereof the grand jurors aforesaid have no means of ascertaining, and therefore cannot give, of the goods, chattels, and money of the Southern Express Company, a body corporate, then and there being and in its possession found, did feloniously steal, take, and carry away.

So that the charge is one of grand larceny of securities and obligations of the United States current as money. The kinds, so far as the witnesses were able to describe them, have been described by the witnesses who put up this package in Alabama. The secretary of the grocery company who took the money in over the counter and put it up in the envelope and sent it to the express office and by the express agent there who counted the money over—they have given you such a description of that money as they could. It was in bills that were current as money, taken in in the ordinary course of the business of that institution, and that property is the property that is said to have been stolen and which was said to have belonged to the Southern Express Company.

I will give you a definition of what ownership means before I get through with my charge, but now I will read to you the prayers that I have given for the defendant at his suggestion and also the prayers that I have given for the Government, and then will give you the other instructions that I think are applicable to the case. These are the prayers that were asked by the defendant's counsel:

1. The court instructs the jury that this is not a civil case,
44 but it is a criminal prosecution, and that the rules as to the amount of evidence in this case are different from those in a

civil case, and a mere preponderance of evidence will not warrant the jury in finding the defendant guilty; but before the jury can convict the defendant they must be satisfied of his guilt beyond all reasonable doubt, and unless so satisfied the jury should find the defendant not guilty.

2. The court instructs the jury that in criminal cases, even where the evidence is so strong that it demonstrates the probability of the guilt of the party accused, still, if it fails to establish beyond a reasonable doubt the guilt of the defendant in manner and form as charged in the indictment, then it is the duty of the jury to acquit the defendant if they entertain such reasonable doubt of his guilt.

3. The court further instructs the jury that in this case the law does not require the defendant to prove himself innocent, but the law imposes upon the prosecution to prove that the defendant is guilty, in manner and form as charged in the indictment, to the satisfaction of the jury beyond all reasonable doubt, and unless they have done so the jury should find him not guilty.

5. The jury are further instructed that the indictment in this case is of itself a mere accusation or charge against the defendant, and is not of itself any evidence of the defendant's guilt, and no juror in this case should permit himself to be to any extent influenced against the defendant because of or on account of the indictment in this case. It is not evidence; it is only an accusation, because it is an *ex parte* statement made by the grand jury.

45 6. The jury are instructed that the law presumes the defendant innocent in this case and not guilty, as charged in the indictment, and the presumption should continue and prevail in the minds of the jury until they are satisfied by the evidence beyond all reasonable doubt of the guilt of the defendant; and, acting on this presumption, the jury should acquit the defendant, unless constrained to find him guilty by evidence convincing them of such guilt beyond all reasonable doubt.

7. The jury are further instructed that the presumption of innocence is not a mere form, to be disregarded by the jury at pleasure, but it is an essential, substantial part of the law of the land and binding on the jury in this case; and it is the duty of the jury to give the defendant in this case the full benefit of this presumption and to acquit the defendant, unless they feel compelled to find him guilty as charged by the law of the land and the evidence in the case convincing them of his guilt as charged beyond all reasonable doubt.

I had erased the words "law of the land," but I see that they apply, and so I restore them and give the instruction just as it was asked. I have only given one other of the prayers asked by the defendant.

The court instructs the jury that if they find from the evidence that the defendant has proven that he was a man of good reputation for honesty and integrity before the alleged commission of the offense as charged in the indictment in this case they are authorized to take that fact into consideration and to give it such weight as

they believe it entitled to in connection with all the other
46 facts and circumstances proven in the case.

The other prayers I have refused, and will endeavor to cover the whole subject by what I shall say to the jury. The wording of some of them I did not quite approve of.

Mr. BEALL: Your honor will understand that we except to the refusal of the court to grant those prayers.

The COURT: Yes; that is understood.

The formal prayers asked by the Government and given are as follows:

The court instructs the jury that in determining the weight to be given the evidence of any witness they should especially look to the interest which the respective witnesses have in the suit or in its result. When any witness has a direct interest in the result of the suit the temptation is strong to color, pervert, or withhold facts. The law permits the defendant, at his own request, to testify in his own behalf. The defendant here has availed himself of that privilege. His testimony is before you, and you must determine how far it is credible. The deep personal interest which he may have in the result of the suit should be considered by the jury in weighing his evidence and in determining how far or to what extent, if at all, it is worthy of credit.

Those are all the formal prayers that were asked by the parties that I have granted. I instruct you now in this case that if you believe from the evidence that the pouch described was put up and sealed, as stated by the witnesses, at Montgomery, Alabama, and that it contained the package of $1,000.00 in bills, as stated, when
the same was delivered to the defendant on board the express
47 car in Atlanta, Georgia, for safe keeping and * * * carriage by him in said car to this city; and if you believe that the defendant opened said pouch and extracted the said package therefrom with the intention of stealing the same at any point or any time after its reception by him and before its delivery to the office in this city, and that said package of bills was the property of the Southern Express Company as carrier thereof, and that it was of the value of $35 or over, and that it was either so taken out by said defendant while in this District or was brought into this District by the defendant after being so taken out at some place outside of this District, then your verdict should be guilty under the first count of the indictment. You have nothing to do with the second count. The Government asks no conviction under that.

For such opening of said pouch and taking therefrom the said package with the felonious intent to appropriate the said bills to his own use would be larceny, and if so taken in this District or brought here by the defendant after being so taken in any of the States of this Union it would be an offence against the United States as the sovereign power in this District, and the same could be tried here.

The said $1,000 package was, according to the testimony, sent to a bank in New York by a grocery company in Alabama, and the said express company had only a qualified title thereto as carrier;

and if you are satisfied from the evidence that such is the fact or that the said express company had the actual care, control, and management of said property when it was so taken, as alleged, by the defendant, then the Government has established such ownership as will satisfy the law on that point and need not prove a general ownership in said company.

48 If you are satisfied from the evidence of certain alleged facts, directly proven in this case, of the existence of those facts, and that certain other connected facts would reasonably and usually follow them according to the common experience of mankind, you are at liberty to infer such other facts. This right to derive inferences from certain facts proven which are not themselves the facts in issue is what is called circumstantial evidence. The testimony relating to the alleged bogus seal, the alleged procuring of a sealing iron, the alleged giving by the defendant of a name not his own, are samples of this class of evidence; and if you believe these things to be true, you can from them presume the existence of such other facts as you may believe would naturally follow and be connected therewith.

You are also at liberty to put such construction on the acts of the defendant at the time he was identified as being the man who ordered the sealing iron of the witness Baumgarten (his excitement, his firing his revolver, &c.) as you may think the natural and proper one—either that it was the natural indignation of an innocent man wrongfully accused or the natural desperation and outburst of a guilty man who thought he had been found out in his crime—as you may conclude from the evidence and circumstances best agrees with the truth. Was such shooting indicative of innocence of guilt? Was it the natural act of a law-abiding citizen or a criminal who saw detection and the dreaded consequences of exposure, loss of position and good name? You are the sole judges of this.

In considering the evidence you should, if possible, reconcile the testimony of the different witnesses where they are apparently

49 contradictory; but if it becomes impossible in any material respect to reconcile the same, then you should consider the character of the witnesses so contradicting each other, their opportunity for observation and knowledge on the subject about which their testimony is given, their manner of testifying on the witness stand, their interest or want of interest in the controversy, and all the circumstances of the case; and if one or the other of such witnesses must give way, in your judgment, you should determine which one is most likely to be mistaken or is most likely to give false or unreliable evidence and discard that one. You can believe what seems to you true, after a consideration of all the circumstances, and disbelieve that which seems to you to be false, after like consideration.

Now, on the subject of good character I will give you this additional instruction: The good character of the accused is only a circumstance to be considered by the jury in connection with all the evidence in the case in determining the question of guilt or inno-

cence. However good the defendant's character may be, that alone will not entitle him to an acquittal. The jury can only acquit when a due consideration of all the testimony in the case, including that in regard to the defendant's character, either convinces them that the defendant is innocent or raises in their minds a reasonable doubt of his guilt.

On this subject of reasonable doubt I undertake to define that as defined by a number of books, and on that subject I will read first from the opinion in the case of Miles *v.* U. S. (103 U. S.), reading first the instruction that was found good in that case by the Supreme Court of the United States—the instruction of the lower court—on page 309:

50 The prisoner's guilt must be established beyond reasonable doubt. Proof beyond a reasonable doubt is such as will produce an abiding conviction in the mind, to a moral certainty, that the fact exists that is claimed to exist, so that you feel certain that it exists. A balance of proof is not sufficient. A juror in a criminal case ought not to condemn unless the evidence excludes from his mind all reasonable doubt; unless he be so convinced, no matter what the class of evidence, of the defendant's guilt, that a prudent man would feel safe to act upon that conviction in matters of the highest concern and importance to his own dearest personal interests.

And in commenting upon that the Supreme Court used this language, on page 312:

The charge of the court defining what is meant by the phrase "reasonable doubt" is assigned as ground of error. The evidence upon which a jury is justified in returning a verdict of guilty must be sufficient to produce a conviction of guilt to the exclusion of all reasonable doubt. Attempts to explain the term "reasonable doubt" do not usually result in making it any clearer to the minds of the jury. The language used in this case, however, was certainly very favorable to the accused and is sustained by a respectable authority.

So they refused to set aside that case because of that charge and that definition given.

I give you the definition, in several cases taken from the books, as to what is meant by reasonable doubt, in the following words:

The jury must be convinced of the guilt of the defendant beyond a reasonable doubt before they can convict. That means just
51 what is usually understood by the word "reasonable;" the doubt must not be whimsical or based on groundless conjecture; it must be one that arises out of the evidence or lack of evidence; and the proof is deemed to be beyond a reasonable doubt when the evidence is sufficient to impress the judgment and understanding of ordinary, prudent men with a conviction on which they would act in their own most important concerns and affairs of life.

In this case if the facts proved leave no hypothesis by which, in the order of natural causes and effects, they can be explained consistently with the innocence of the defendant, they will warrant a conviction. This is the true test of circumstantial evidence, and such as would exclude all reasonable doubt.

There is some testimony here of a confession, or admission which amounts practically to a confession, so that I will give you the instruction relative to confessions, so as to enable you to put such weight on that as the circumstances of the case and the words used, if you find they were used, entitle them to have. In that connection, I want to read an extract from the opinion of the Court of Appeals of the District of Columbia in the case of Hardy *v.* U. S. (3 Court of Appeals, 48).

Confessions are not to be excluded because not spontaneous. They would rarely, if ever, be made without the operation of some influence upon the mind of the prisoner. A mere hope, produced chiefly by the prisoner's own imagination or by his conception of the necessities of his situation, or a fear produced by the fact that he has been charged with a serious crime, for the first time in
52 his life, perhaps, arrested and lodged in a close cell, are not sufficient to require the exclusion of confessions made under their several influences. It is only where the confession may be said to have been extorted—that is to say, dragged reluctantly from the breast of the prisoner through the deliberate excitation of his hopes or fears by some actual promise or threat—that the court should refuse to let it go to the jury for any purpose. In all other cases it should be given to the jury as was done in this instance, with the instruction that it was their duty to reject it altogether if they should have a reasonable doubt as to its voluntary nature.

Confessions, of course, are of various kinds. If the defendant, on arraignment here, on having this indictment read to him in open court, should plead guilty, that is all he need to say. That would be a judicial confession that would dispense with the necessity of trial at all—a formal judicial confession of guilt. But if he makes a statement outside of court that amounts to such a confession as that, and it is made voluntarily, without any inducement or any threat or fear held out to him, no matter even if made to some officer having him in charge or made to a disinterested party, it would be competent evidence to be produced before you, and in this case evidence of that character has been introduced.

A free and voluntary confession is evidence of the highest character, but if made by reason of fear, duress, threat, promise, or hope induced upon the mind of the accused or made by a third person, it is not to be admitted, and, if admitted, the jury are to de-
53 termine what force it may have where the nature of the force or influence that was exercised does not appear until the testimony is before the jury. If such influence has been brought to bear on the mind of the defendant as to overcome his will and make the confession unworthy of credit, it should not be believed or considered; and if promises or threats were used, if they had no influence, or their influence was totally done away with before the confession was made, the evidence should then be considered.

The main question in regard to confessions is the same as it is in any other kind of testimony. The main question is, was the confession made under such circumstances that it may be considered

true? Is it worthy of belief as a statement of facts? If you believe that the defendant told Hockaday that he had only $700 of the money which was in the $1,000 missing package, you may, if you believe such admission to be the truth, presume from that statement that he had feloniously taken the missing package; and if you further believe that he had brought such money, or $35 or more of it, into the District, your verdict should be guilty. If you find that the defendant was on the through express car when he received the pouch, and if there is no evidence that he was off the car between Atlanta and Washington; and if you further find from all the evidence, alleged admissions, and circumstances that he in some way obtained possession of said pouch, opened it and took out the package feloniously while on said run, you may infer from such facts that he brought it with him to this District in the absence of proof to the contrary.

There is only one other matter that I think it necessary for me to allude to in giving these instructions, and that is in regard
54 to sympathy. I will give you the instruction on that subject as the books state the law to be. Of course, this is a serious case—serious business. We have all been here seriously engaged in it for a week, and we are to give it serious consideration step by step. First the Government introduced evidence, then the defendant introduced evidence, then counsel for the Government and for the defendant made their arguments, and now the court is instructing you as to the law, and that law you will take in deciding the question of the guilt or innocence of the prisoner. That is the whole question to be decided. All the other steps in the case are but steps taken to enable you to come to a right conclusion upon the question whether the defendant is guilty or innocent.

The jury should not allow their feelings to be factors in the matter of their verdict. Their judgment should not be swerved or clouded by sympathy for a defendant or by prejudice against a defendant. The evidence alone must be looked to by the jury to ascertain the truth of the charges made, and if they are convinced as to what the real truth is, the verdict must follow that, no matter if it results in a verdict of guilty or not guilty.

Gentlemen, the whole matter is one of fact to be submitted to you under these instructions. You can take the indictment with you and go to your room and consult over this matter. Consider all the circumstances, all the evidence that has been introduced on both sides, the arguments of counsel that have been introduced, and then, applying the law as the court has given it to you, try to determine what is the correct verdict to be rendered by you in this case. When you have so determined, the verdict will be: Guilty, as in-
55 dicted under the first count, or not guilty.

The defendant, through his counsel, excepted to the following portions of the above charge, and asked that his exceptions thereto be noted, which was by the court accordingly done, to wit, that—

"Those are all the formal prayers that were asked by the parties that I have granted;" and—

"I instruct you now in this case that if you believe from the evidence that the pouch described was put up and sealed, as stated by the witnesses, at Montgomery, Ala., and that it contained the package of one thousand dollars in bills as stated when the same was delivered to the defendant on board of the express car in Atlanta, Ga., for safe keeping and carriage by him in said car to this city, and if you believe that the defendant opened said pouch and extracted said package therefrom with the intention to steal the same at any point or at any time after its reception by him and before its delivery to the office in this city, and that said package of bills was the property of the express company as carrier thereof, and that it was the value of $35 or more, and that it was either so taken out by the said defendant while in this District or was brought into this District by the defendant after being so taken out at some place outside of this District, then your verdict should be guilty under the first count of the indictment, for such opening of said pouch and taking therefrom the said package with the felonious intent of appropriating the said bills to his own use would be larceny, and if so taken in this District, or brought here by the defendant after
56 being so taken in any of the States of this Union, it would be an offense against the United States as the sovereign power in this District, and the same could be tried here;" and—

"If you are satisfied from the evidence of certain alleged facts directly proven in this case of the existence of those facts, and that certain other connected facts would reasonably and usually follow them according to the common experience of mankind, you are at liberty to infer such other facts. This right to derive inferences from certain facts proven, which are not themselves the facts in issue, is what is called circumstantial evidence. The testimony relative to the bogus seal, the alleged procuring of the sealing iron, the alleged giving by the defendant of a name not his own, are samples of this rule of evidence; if you believe these things to be true, you can from them presume the existence of such other facts as you may believe would naturally follow and be connected therewith;" and—

"You are also at liberty to put such construction on the acts of the defendant at the time he was identified as being the man who ordered the sealing iron of the witness Baumgarten (his excitement, his firing his revolver, &c.) as you may think the natural and proper one; either that it was the natural indignation of an innocent man wrongfully accused or the natural outburst of a guilty man who thought he had been found out in his crime, as you may couclude from all the evidence and circumstances best agrees with the truth;" and—

"However good the defendant's character may be, that alone will not entitle him to an acquittal;" and—

"There is some testimony here of a confession or admis-
57 sion, which amounts practically to a confession, so that I will give you an instruction relative to confessions so as to enable you to put such weight on that as the circumstances of the

case and words used, if you believe they were used, entitle them to have. In that connection I want to read an extract from the opinion of the Court of Appeals of the District of Columbia in the case of Hardy *vs.* U. S., 3 Court of Appeals, 48, 'Confessions are not to be excluded because not spontaneous. They would rarely, if ever, be made without the operation of some influence upon the mind of the prisoner. A mere hope, produced chiefly by the prisoner's own imagination or by his conception of the necessities of his situation, or the fear produced by the fact that he has been charged with a serious crime for the first time in his life, perhaps, arrested and lodged by himself in a close cell, are not sufficient to require the exclusion of confessions made under their several instances. It is only where the confessions may be said to be untrue—that is to say, dragged reluctantly from the breast of the prisoner through the deliberate excitation of his hopes or fears by some actual promise or threats—that the court should refuse to let it go to the jury for any purpose. In all other cases it should be given to the jury, as was done in this instance, with the instructions that it was their duty to reject it altogether if they should have a reasonable doubt as to its voluntary nature.' Confessions, of course, are of various kinds. If the defendant on arraignment here, on having this indictment read to him in open court, should plead guilty, that is all he need say. That would be a judicial confession that would dispense with
the necessity of a trial at all—a formal judicial con-
58 fession of guilt; but if he makes the statement outside of court that amounts to such a confession as that, and it was made voluntarily, without any inducement or threat or fear held out to him, no matter if made to some officer having him in charge or made to a disinterested party, it would be competent evidence to be produced before you, and in this case evidence of that character has been introduced. A free and voluntary confession is evidence of the highest character, but if made by reason of fear, duress, threat, promise, or hope induced upon the mind of the accused or made by a third person, it is not to be admitted, and, if admitted, the jury are to determine what force it may have where the nature of the force or influence that is exercised does not appear until the testimony is before the jury. If such influence has been brought to bear on the mind of the defendant as to overcome his will and make the confession unworthy of credit, it should not be believed or considered. If promises or threats were used; *it* they had no influence or their influence was totally done away with before the confession was made, the evidence should then be considered. The main question in regard to confessions is the same as it is in any other kind of testimony. The main question is, was the confession made under such circumstances that it may be considered true? Is it worthy of belief as a statement of facts? If you believe that the defendant told Hockaday that he had only $700 of the money which was in the $1,000 missing package, you may, if you believe such admission to be the truth, presume from that statement that he had feloniously taken the missing package, and

if you further believe that he had brought such money or
59 $35 or more of it into the District of Columbia, your verdict should be, Guilty;" and—

"If you find that the defendant was on the through express car when he received the pouch, and if there is no evidence that he was off the car between Atlanta and Washington, and if you further find from all the evidence, the alleged admissions and circumstances, that he in some way obtained possession of said pouch, opened and took out the package feloniously while on said run, you may infer from such facts that he brought it with him to this District in the absence of proof to the contrary."

And to that portion of the charge wherein the court read from the opinion of the United States Supreme Court in the case of Miles *vs.* United States, 103 U. S., wherein he undertook to give the definition in several cases taken from the books as to what is meant by reasonable doubt.

Exceptions were taken and noted to the above portions of the instructions given by the court. The court rejected the prayers for instructions Nos. 4, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 19, 20, and prayer A; and to the rejection of each, every, and all of said instructions the defendant then and there excepted and asked that his exceptions to the action of the court in rejecting each, every, and all of said instructions be noted by the court, which was accordingly done, said instructions being as follows, to wit:

4. A reasonable doubt is that state of mind which, after a full comparison and consideration of all the evidence, both for the Government and defense, leaves the minds of the jury in that
60 condition that they cannot say that they feel an abiding faith amounting to a moral certainty, from the evidence in the case, that the defendant is guilty of the charge as laid in the indictment. If you have such doubt—if your conviction of the defendant's guilt, as laid in the indictment, does not amount to a moral certainty from the evidence in the case—then the court instructs you that you must acquit the defendant.

8. The court instructs the jury that the first count in the indictment charges the defendant with the crime of grand larceny, and that the crime was committed in the District of Columbia, and that the property taken was the property of the Southern Express Company, and before the jury can find the defendant guilty under that count of the indictment they must be satisfied beyond all reasonable doubt and to a moral certainty that the defendant did take, steal, and carry away, feloniously, the property alleged in said count by him to have been so taken, stolen, and carried away, and that he committed said crime within the District of Columbia, and that the property was then and there the property of the Southern Express Company, and unless the jury are satisfied from the evidence introduced before them, beyond all reasonable doubt and to a moral certainty, of each and every fact herein alleged necessary to be proven, the jury must find the defendant not guilty on the first count.

9. Even though the jury should be satisfied from the evidence, beyond all reasonable doubt, that the defendant did feloniously steal and carry away the money and property alleged in said indictment to have been taken, stolen, and carried away by him, yet unless they are satisfied from the evidence beyond all and every reasonable doubt and to a moral certainty that he did so take, steal, and
61 carry away said money and property in the District of Columbia, they must find the defendant not guilty on the first count.

10. Even though the jury should believe from the evidence that the defendant did feloniously take, steal, and carry away the property and money of the Southern Express Company, as charged in said indictment, yet if they further believe from the evidence that he feloniously took, stole, and carried away said money and property, either in the State of Georgia, South Carolina, North Carolina, or Virginia, they must find the defendant not guilty.

11. The court instructs the jury that in the first count in the indictment upon which the defendant is being tried he is charged with the grand larceny of "certain securities and obligations of the United States, current as money and being in the national currency and money of the United States, of the value in the aggregate of one thousand dollars," and before the jury can convict on the first count of said indictment they must be satisfied from the evidence introduced before them to a moral certainty and beyond all reasonable doubt that the things or property or some part thereof, alleged to have been taken as described in said count of said indictment, was legal-tender currency of the United States.

12. The court instructs the jury that before they can convict the defendant they must be satisfied from the evidence introduced before them to a moral certainty and beyond all reasonable doubt that the defendant did steal some legal-tender money of the United States.

13. The court instructs the jury that only gold, silver, and
62 United States Treasury notes are legal-tender money of the United States.

14. The court instructs the jury that neither national bank bills, silver certificates, gold certificates, or anything is money in the United States except gold, silver, and United States Treasury notes.

15. The court further instructs the jury that the national currency of the United States is only legal-tender money, and that is only gold, silver, and United States Treasury notes.

16. The court instructs the jury that the defendant cannot be convicted upon the indictment except upon proof introduced before the jury establishing beyond all and every reasonable doubt that said package did contain some legal-tender money of the United States.

17. Even though the jury may believe from the evidence that the defendant did steal the securities and obligations and property mentioned in the indictment, yet if they believe from the evidence that the crime committed, whatever it was, was committed outside of the District of Columbia they must acquit the defendant.

63 19. The court instructs the jury that the venue, which means the place where the alleged crime is charged to have been committed, is and constitutes a part of the crime, and the law requires it to be affirmatively proven, and the jury cannot convict the defendant unless they are satisfied from the evidence introduced before them, beyond all and every reasonable doubt, that the defendant committed the crime with which he is charged in the District of Columbia.

20. If the jury believe from the evidence that the defendant did at any place outside of the District of Columbia break the seal of the sack which has been introduced before them and abstract therefrom the alleged lost package, that the crime was then and there committed, at the place and time he so broke the seal and abstracted said package, and the jury cannot find the defendant guilty unless they are satisfied from the evidence that the crime was committed within the District of Columbia.

Prayer A.—The court instructs the jury to return a verdict for the defendant.

The cause then being submitted to the jury, they found the defendant guilty as charged in the first count in the indictment; and thereupon and before sentence the defendant submitted to the court the following motion in arrest of judgment:

64 In the Supreme Court of the District of Columbia, Holding a Criminal Term.

UNITED STATES
vs.
GEORGE R. DAVIS. } No. 22224.

And now, after verdict and before sentence, comes the said George R. Davis, and prays that judgment may be arrested, and for causes says:

1st. It does not appear from the record in said cause that the said court had jurisdiction of the defendant, and all necessary jurisdictional facts do not appear upon the face of the record. The record does not show that the said court, at the term thereof at which the indictment in this case is alleged to have been filed in court, was held at the place designated by law for the holding of said court, nor does the record show where the said court was held for the April term, 1900.

Second. The record does not state where the said court for the April term, 1900, was held, nor does it show that a grand jury of good and lawful men was empaneled, as required by law.

3rd. Said indictment upon which the defendant was tried is insufficient in law in this, among other things, that it does not state the particular town, village, hamlet, or place where the alleged crime was committed.

4th. Said indictment does not show the place of residence of defendant nor his addition of degree of mystery, as by law in this

District in force is required to be shown upon every indict-
65 ment.

5th. There is a misjoinder in said indictment wherein embezzlement, which is a misdemeanor, is joined in a count with grand larceny, which is a felony.

6th. Neither count in said indictment sufficiently specified, described, or identified the property and money alleged to have been taken by the defendant.

7th. The said indictment did not inform the defendant of the nature and cause of the accusation charged against him in either of said counts.

8. There was no proof introduced before the jury which showed or tended to show that the defendant ever committed any crime within the District of Columbia or that he was guilty of either crime charged in said indictment within the District of Columbia.

9. There was no proof introduced on the trial of said cause which showed or tended to show that the defendant had either stolen or embezzled any securities and obligations of the United States current as money and being in the national currency and money of the said United States. The court should have instructed the jury, upon the motion of the defendant, to return a verdict of not guilty against him when the proof developed the fact that whatever offence, if any, the defendant had committed was committed outside of the District of Columbia, there being no proof whatever that the defendant had committed any crime within the District of Columbia.

66 10. The court should have instructed the jury, upon the request of the defendant, to return a verdict of not guilty against the defendant when, after all the testimony of the Government had been introduced, there was no testimony whatever which proved or tended to prove that he had taken any legal-tender money of the United States, or that the alleged lost package contained any legal-tender money whatever of the United States.

11. The proof introduced before the jury clearly developed the fact that the court had no jurisdiction of the crime alleged to have been committed nor of the defendant.

Wherefore, for the causes herein assigned and for the causes assigned in the motion to quash said indictment and for other manifest defects in the record aforesaid, the said George R. Davis prays that judgment herein may be arrested.

(Signed) GEORGE R. DAVIS.

FRED BEALL,
Attorney for Defendant.

67 The court overruled the above motion; to which action of the court in overruling the said motion the defendant then and there excepted.

The defendant also filed and submitted to the court a motion to set aside the verdict and grant him a new trial; which motion was by the court overruled, and to the action of the court in overruling said motion for a new trial the defendant then and there excepted,

and asked that his exception be noted, which is accordingly done.

68 The court overruled the above motion for a new trial; to which action of the court in overruling the motion the defendant then and there excepted, and asked that his exceptions to the said ruling of the court be noted, which was accordingly done.

Be it further remembered that each of the separate and several exceptions taken by counsel for the defendant to each of the separate and several rulings of the court was so taken by counsel for the defendant in open court during the progress of his said trial separately and severally, and said exceptions and each of them was then and there separately and severally duly entered upon the minutes of the justice presiding at the trial, and counsel for the defendant then and there prayed the court and now prays the court to sign and seal this bill of exceptions, to have the same force and effect as if each of the said exceptions was separately and severally set forth in a separate bill, and at the request of counsel for the defendant the same is accordingly signed and sealed and made a part of the record in this case, now for then, this 14th day of May, 1901.

JOB BARNARD, *Justice.*

69 Supreme Court of the District of Columbia.

UNITED STATES OF AMERICA, *District of Columbia,* } *ss:*

I, John R. Young, clerk of the supreme court of the District of Columbia, hereby certify the foregoing pages, numbered from 1 to 68, inclusive, to be a true and correct transcript of the record, as prescribed by rule 5 of the Court of Appeals of the District of Columbia, in cause No. 22224, criminal, United States *versus* George R. Davis, as the same remains upon the files and of record in said court.

Seal Supreme Court of the District of Columbia.

In testimony whereof I hereunto subscribe my name and affix the seal of said court, at the city of Washington, this 16th day of May, A. D. 1901.

JOHN R. YOUNG, *Clerk.*

Endorsed on cover: District of Columbia supreme court. No. 1098. George R. Davis, appellant, *vs.* The United States. Court of Appeals, District of Columbia. Filed May 16, 1901. Robert Willett, clerk.